

STATE OF SOUTH CAROLINA

(Caption of Case)

Happy Rabbit, LP on behalf of Windridge
Townhomes

v.

Alpine Utilities, Inc.

196531
BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2008 - 360 - S

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☐ Other:

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☒ Sewer
☐ Telecommunications
☐ Transportation
☐ Water
☐ Water/Sewer
☐ Administrative Matter
☐ Other:

NATURE OF ACTION (Check all that apply)

- | | | |
|----------------------------------------------------|------------------------------------------------------------|----------------------------------------------------|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input checked="" type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

WILLOUGHBY & HOEFER, P.A.

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*ALSO ADMITTED IN TX

December 15, 2008

VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator

Public Service Commission of South Carolina

101 Executive Center Drive
Columbia, South Carolina 29210

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2008 DEC 15 PM 2:32
SO PUBLIC SERVICE
COMMISSION

RE: Happy Rabbit, LP on behalf of Windridge Townhomes v. Alpine Utilities, Inc.;
Docket No. 2008-360-S

Dear Mr. Terreni:

This letter is written in response to Happy Rabbit, LP's ("Happy Rabbit") Response to Reply to Return to Motion ("Response") filed with the Public Service Commission of South Carolina ("Commission") on December 9, 2008.¹ Therein, Happy Rabbit suggests that Alpine's request for oral argument on its Motion to Dismiss is unnecessary and "can be incorporated into the hearing on the merits of Happy Rabbit's Complaint when scheduled." Happy Rabbit further opines that a separate proceeding for oral arguments would be "unnecessary, a waste of both party's resources and a waste of judicial economy of this Commission."

Initially, it would appear that Happy Rabbit believes that a denial of Alpine's Motion to Dismiss is a foregone conclusion and that any consideration by the Commission of this matter would be perfunctory – a position with which Alpine clearly disagrees. Alpine respectfully

¹ As was also the case with Happy Rabbit's Reply to Return to Motion previously filed in this Docket, and contrary to Happy Rabbit's assertion in its letter to the Commission dated December 9, 2008, Alpine states that it has not been served with the Response as of the time of this filing. Counsel for Alpine acknowledges that on December 9, 2008, Happy Rabbit provided a copy of its filing to the other parties of record via electronic mail; however, Alpine asserts that the submission of pleadings to parties via electronic mail does not constitute service as contemplated by the Commission's regulations. See Rule 5 of the South Carolina Rules of Civil Procedure. Accordingly, the Commission should determine the pending motion without reference to the Return or the Response as they are not properly before the Commission. However, Alpine submits this reply in the event the Commission is disposed to consider Happy Rabbit's filings concerning this matter.

asserts that Happy Rabbit's concern for wasting the parties' resources and the judicial economy of the Commission in point of fact supports Alpine's request for oral arguments to be scheduled on this matter such that its Motion to Dismiss may be ruled upon promptly. Delaying consideration of the Motion until the "hearing on the merits of Happy Rabbit's Complaint when scheduled" would subject the parties and the Commission to time-consuming discovery, the development of prefiled direct and rebuttal testimony and other prehearing matters, all of which may ultimately be rendered unnecessary should the Commission grant Alpine's Motion to Dismiss. Moreover, the costs incurred by Alpine in this potentially fruitless endeavor would necessarily be passed through to its customers. Therefore, Alpine asserts that the scheduling of oral arguments on the pending motion before such steps are required to be taken would constitute a more economical use of the parties' and the Commission's resources.²

If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

WILLOUGHBY & HOEFER, P.A.



Benjamin P. Mustian

BPM/cf
Enclosures

cc: Nanette S. Edwards, Esquire
Richard L. Whitt, Esquire

² Alpine would note that Happy Rabbit's concern for the "judicial economy of this Commission" does not appear to be justified in as much as Happy Rabbit continues its refusal to explain how the issues raised in the instant proceeding before this Commission are separate and distinct from those issues it is attempting to raise before the circuit court. See Alpine's Motion to Dismiss and Reply to Return to Motion. As further explained in its Motion to Dismiss, Alpine reasserts that these issues are not separate and distinct. Rather, Alpine believes Happy Rabbit has filed this action purely in an attempt to use the Commission's complaint process as a coercive weapon so as to allow it to withhold payment for sewer services rendered and continuing to be rendered while forestalling Alpine's right to lawfully disconnect the property for nonpayment.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-360-S

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SC PUBLIC SERVICE
COMMISSION


Happy Rabbit, LP on behalf of Windridge,)
Townhomes,)
)
Complainant)
)
v.)
)
Alpine Utilities, Inc.,)
)
Defendant.)
_____)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of Respondent's **Response to Plaintiff's Response to Reply to Return to Motion of Happy Rabbit and Request for Oral Argument** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

Richard L. Whitt, Esquire
Austin & Rogers, P.A.
Post Office Box 11716
Columbia, South Carolina 29201


Clark Fancher

Columbia, South Carolina
This 15th day of December, 2008.